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2003-22-05

FLORENCE P. BELSER
GENERAL COUNSEL

March 21, 2005

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RECEIVED
2005 MAR 21 PM 4:40
SC PUBLIC SERVICE
COMMISSION

Re: Application of BUSH RIVER UTILITIES, INC. for Approval of New
Schedule of Rates and Charges For Sewage Service Provided to
Residential, Commercial and Wholesale Customers in all areas Served
PSC Docket No. 2004-259-S

Dear Mr. Terreni:

Enclosed for filing please find thirteen (13) copies of the Office of Regulatory
Staff's Petition for Rehearing or Reconsideration and Motion for Clarification. Please
date stamp the extra copy enclosed and return it to me via our delivery person.

Please let me know if you have any questions.

Sincerely,

Benjamin P. Mustian

Enclosures
cc: Charles Cook, Esq. (w/encl)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-259-S

RECEIVED
2005 MAR 21 PM 4:00
SC PUBLIC SERVICE
COMMISSION

IN RE: Application of BUSH RIVER)	OFFICE OF REGULATORY STAFF'S
UTILITIES, INC. for Approval of)	PETITION FOR REHEARING OR
New Schedule of Rates and Charges)	CERTIFICATE OF SERVICE
For Sewage Service Provided to)	MOTION FOR CLARIFICATION
Residential, Commercial and)	
Wholesale Customers in all areas)	
Served.)	

This is to certify that I, Cindy Clary, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the OFFICE OF REGULATORY STAFF'S PETITION OR REHEARING OR RECONSIDERATION AND MOTION FOR CLARIFICATION in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Charles H. Cook, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205



Cindy Clary

March 21, 2005
Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2004-259-S

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SC PUBLIC SERVICE
COMMISSION

IN RE: Application of BUSH RIVER) UTILITIES, INC. for Approval of) New Schedule of Rates and Charges) For Sewage Service Provided to) Residential, Commercial and) Wholesale Customers in all areas) Served.)	OFFICE OF REGULATORY STAFF'S PETITION FOR REHEARING OR RECONSIDERATION AND MOTION FOR CLARIFICATION
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The Office of Regulatory Staff ("ORS"), pursuant to S.C. Code Ann. §§ 58-5-330 and 1-23-10, et seq. (as amended) and the applicable rules and regulations of the Public Service Commission of South Carolina ("Commission"), requests that the Commission reconsider certain matters addressed in Order No. 2005-83 ("Order"), issued on February 25, 2005 in the above-referenced docket. ORS received the Order on February 28, 2005. In support of this Petition and Motion, ORS states as follows:

I. Introduction

On February 25, 2005, the Commission issued its Order No. 2005-83 in this docket setting forth new rates for Bush River Utilities, Inc. ("BRUI") to charge its wastewater customers pursuant to a two-phased plan ("Phase-I" and "Phase-II"). The Phase-I rate increase is to be implemented "during construction" at BRUI. The Phase-II rate increase is to be implemented after BRUI's construction and after meeting certain requirements. These requirements include BRUI being audited by ORS, having expended a minimum of \$932,278 in treatment plant upgrades, being in compliance with all DHEC upgrades and maintaining its books in accordance

with the NARUC Uniform System of Accounts. ORS does not contest the Commission's decision to grant rate relief to BRUI in a two-phased approach. ORS also does not contest the Commission's requirement that BRUI be in compliance with all SCDHEC regulations or that BRUI maintain its books and records according to the NARUC Uniform System of Accounts prior to Phase-II of the rate increase. ORS, however, requests that the Commission reconsider the time-frame set forth for BRUI to post the required performance bond and requests that the Commission clarify the scope of the audit it has ordered ORS to conduct prior to BRUI implementing Phase-II of its rate increase. Finally, ORS requests that the Commission reconsider the service life attributed to the proposed wastewater treatment facility upgrades.

II. The Commission Erred By Requiring BRUI To Post The Performance Bond By The End Of BRUI's Construction, i.e. Phase-I.

By Order No. 2005-83, the Commission held that BRUI must post a performance bond with a face value of one hundred thousand dollars (\$100,000) by the end of its construction phase, i.e. Phase-I [P. 38] While ORS agrees that BRUI's current \$10,000 bond is insufficient and does not meet statutory requirements, ORS believes the Commission erred in not requiring BRUI to obtain the required bond immediately.

S.C. Code Ann. Section 58-5-720 provides in relevant part

The commission shall, before the granting of authority or consent to any water or sewer utility regulated by the commission, for the construction, operation, maintenance, acquisition, expansion, or improvement of any facility or system, prescribe as a condition to the consent or approval that the utility shall file with the commission a bond with sufficient surety, as approved by the commission, in an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars payable to the commission and conditioned upon the provision by the utility of adequate and sufficient service within its service area [Emphasis added]

26 S.C. Code Ann. Regs. 103-512.3 states:

Prior to operating, maintaining, acquiring, expanding or improving any utility system, for which Commission approval is required, the utility shall have on file with the Commission a performance bond with sufficient surety.... [Emphasis added].

S.C. Code Ann. §58-5-720 states sufficient surety is an amount not less than one hundred thousand dollars and not more than three hundred fifty thousand dollars.

26 S.C. Code Ann. Regs. 130-512.3.1 provides guidance in designating a sufficient surety amount within the minimum and maximum limits and states in part:

Based upon the expenses of the utility as submitted in the annual report and as reviewed and adjusted by Staff, the Staff shall make recommendations for increasing or reducing the amount of the bond within the minimum and maximum limits as prescribed by statute.

It is undisputed that BRUI is a sewer utility “operating” in Richland and Lexington Counties. [P. 4]. As an “operating” utility, BRUI is required by South Carolina statute and the Commission’s own regulations to have a minimum bond of \$100,000. Because BRUI currently has only a \$10,000 bond, it is not in compliance with South Carolina law at the present time. The statute requiring a minimum bond of \$100,000 became effective on June 1, 1999. The bond is required to ensure that the utility provides adequate and sufficient service to its customers. Thus, it may be said that the bond is required as protection for the public and the public interest. Unlike the Commission’s regulations, which the Commission, by virtue of 26 S.C. Code Regs, 103-501(3), may waive upon a showing that “compliance with any of the[se] rules and regulations introduces unusual difficulty” and “a finding by the Commission that such waiver is in the public interest,” the Commission has no authority to waive a statutory requirement. Because the Commission may not waive the requirements of S.C. Code Ann. § 58-5-720 (Supp.

2004), BRUI, as an “operating” utility, must post a bond with sufficient surety in an amount not less than \$100,000 and not more than \$350,000. BRUI should not be allowed to wait and obtain the required bond “by the end” of its construction, i.e. by the end of Phase-I. [P. 38]. Instead, BRUI should be required to comply with the statutory requirements of S.C. Code Ann. § 58-5-720 (Supp. 2004) and to post the required bond within an immediate and definite time period.

As further argument against allowing BRUI to wait and obtain the required bond “by the end” of its construction, ORS asserts that it is unclear in the Order how to establish when construction is complete at BRUI. Construction at BRUI has not begun and could conceivably take years to complete. By conditioning the filing of the statutorily mandated bond on completion of construction taking place, the Commission would be allowing BRUI to operate with an insufficient and non-compliant \$10,000 bond for an indeterminate amount of time. The dead-line set forth by the Commission for BRUI to post its required bond is ambiguous and uncertain.¹ Accordingly, ORS requests that the Commission set forth a more definite and immediate time period.

ORS requests that the Commission reconsider its order that BRUI “comply with the bonding requirement by completion of construction of its new treatment facility,” and to provide a more reasonable, definite and immediate time period for BRUI to post the \$100,000 bond. [P. 30].

¹ While BRUI has pledged that it will make the necessary upgrades to its wastewater treatment facility, there is a possibility that the contemplated construction may never be completed. Because the possibility exists that the construction might never be completed, the dead-line by which BRUI must post the statutorily required bond may never come to fruition.

III. ORS Requests That The Commission Clarify Its Order With Respect To The Audit It Ordered ORS To Perform On BRUI.

The Commission ordered BRUI to undergo an audit from ORS before implementing Phase-II of the rate increase. [P. 34]. In turn, the Commission also ordered ORS to certify that it performed the required audit and the results of that audit. [Id].

BRUI's Phase-II rates may be implemented only after construction is complete and certain requirements, such as the ORS audit, have been met. Accordingly, ORS respectfully requests clarification and direction on the timing, scope, and certification process of the audit.

ORS requests that the Commission state whether ORS or BRUI is to initiate the audit. Since the rate increase allowed in Phase-II is for the benefit of BRUI, ORS suggests that the Commission order the audit to begin at the written request of BRUI with the stated requirement that BRUI file its written request for the audit with the Commission and a copy mailed to ORS.

ORS requests parameters on the scope of the audit. Currently, ORS is ordered to audit the "Commission directives in this matter." [P. 43]. ORS reads these matters as BRUI posting the Commission ordered performance bond and BRUI maintaining its books and records in accordance with the NARUC Uniform System of Accounts. [Pp. 37, 39 and 43]. Although not specifically addressed in the Order, ORS also requests direction on whether it should audit 1) BRUI's revenues, expenses and allocations, 2) BRUI's collection practices to determine if it is collecting revenues to achieve the operating margin the Commission deemed appropriate, 3) whether BRUI is in accordance with South Carolina law and the Commission's rules and regulations, and 4) any other matters not addressed in the Order or this Petition and Motion.

Lastly, ORS requests that the Commission set forth directives for ORS's report to the Commission certifying the audit of BRUI was performed and setting forth the results of the

audit. Specifically, the ORS requests that the directives set forth the appropriate format, content, and any other matters the Commission wishes to have for review.

IV. The Commission Erred By Allowing A Twenty-Five Year Service Life On The Proposed Sewer Treatment Plant Upgrades.

In Adjustment Z, Depreciation Expense, of the Order, the Commission states that ORS took no position on the service life of the proposed sewer treatment plant upgrades. ORS believes the Commission erred by not considering the testimony of Mr. Willie J. Morgan concerning his recommendation concerning depreciation of the new sewer plant. The Commission also recognized BRUI's evidence relating to the service life of the proposed treatment plant as credible.

While, at the time of the hearing, ORS did not support the Phase-II increase requested by the utility, and accordingly, did not make an accounting adjustment for the new sewer plant during the second phase, ORS did make a recommendation as to the service life of the proposed upgrades. Mr. Morgan testified that "ORS recommends that the existing WWTF [wastewater treatment facility] cost be capitalized and depreciated over 32 years and also that any new WWTF cost be capitalized and depreciated over a 32-year period." [ORS Witness Morgan Prefiled Testimony Pp. 4-5.] Mr. Morgan further states in his testimony that "these recommendations are based on the conclusions outlined in the Florida Public Service Commission Water and Wastewater System Regulatory Law as recommended by the NARUC staff." [*Id.* at P. 5, ll. 2-4.]

BRUI, to support its request for a twenty-five-year service life, offered testimony, its application, and three late filed exhibits offered as one composite exhibit marked as Hearing Exhibit 6. Neither the application nor the testimony was supported by documentation provided either prior to or during the hearing. In fact, the testimony of the BRUI witnesses contradicted

the application in that the application asked for a twenty-five-year service life and the prefiled testimony of the witnesses requested a twenty-year service life period.

Of the composite exhibit, the first exhibit was an excerpt from a publication entitled The Design of Municipal Wastewater Treatment Plants, Volume I, pages 24, 69, 137, 141. While the excerpt appears to have been provided to show the facility will last no longer than 20 years, careful reading of the exhibit shows this is not the case. The publication clearly discusses the principles of integrated facilities design in general and makes recommendations as to considerations that should be included when designing a wastewater plant. “A facility process or layout commitment to an uncertain distant future deserves careful scrutiny *if it would significantly compromise system operation during the first 15 to 20 years after start-up.*” P. 69. (Emphasis added). The Exhibit also recommends having a facilities plan where the scope should include “identifying design year needs (*usually at least 20 years*).” P. 137. (Emphasis added). The Exhibit further provides that, fundamental to the concept of process oriented systems, “the life of the equipment is expected to last *at least 20 years and structures 30-40 years.*” P. 141. (Emphasis added). ORS agrees that when planning a wastewater system upgrade, serious consideration should be given to a system that has a useful life of at least 20 years. Further, ORS agrees that any construction of facilities where equipment and structures do not last at least 20-30 years would be contrary to the principles of engineering design. However, this exhibit does not speak to the service life of the system upgrade proposed by BRUI. Rather, it provides generalities that should be considered when constructing a wastewater treatment facility.

BRUI also offers two letters from Mr. Jim Stanton from Interstate Utility Sales and Mr. Anthony R. Combs from Combs & Associates, Inc. Mr. Stanton states in his letter that “while the steel or concrete structure may last longer than twenty years if properly maintained, the

internals of a plant will require replacement before twenty years.” First, ORS takes exception to this testimony in that Mr. Stanton does not specifically discuss the upgrades proposed by BRUI, rather, he discusses wastewater treatment facilities in general. Second, Mr. Stanton clearly states that certain portions of the facility, such as the structure, may last longer than twenty years. ORS asserts that considering BRUI has chosen to use the average service life, or group plan, method of depreciation, the entire system as a whole, i.e. the structure plus all internal components, must be depreciated together based on the average of the service lives of the individual components. According to the National Association of Regulatory Utility Commissioners’ Public Utility Depreciation Practices (August 1996), the group plan of depreciation accounting is particularly adaptable to utility property. “Rather than depreciating each item by itself (unit depreciation) or depreciating one single group containing all utility plant, a group contains homogenous units of plant which are alike in character, used in the same manner throughout the utility’s service territory, and operated under the same general conditions.” P. 19. NARUC acknowledges there will be different lives for individual units within groups; however, the average service life for the group takes into account those individual service lives.

Mr. Stanton recognizes that while certain components have shorter life spans, other components have much longer life spans. Considering the wastewater treatment facility is a combination of several different components, it is unclear from Mr. Stanton’s letter whether the average service life of the facility should be twenty years or not. Therefore, ORS asserts this letter is inconclusive and should not be considered by the Commission as authoritative.

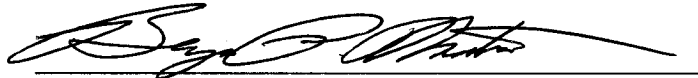
The letter from Mr. Combs is similarly unpersuasive. Mr. Combs states that he “represent[s] the wastewater treatment plant equipment that [Mr. Parnell has] drawn and specified for the Bush River Wastewater Treatment Plant... [and] that a twenty year design life

is our industry standard for this equipment.” While it is possible that Mr. Combs is referencing the equipment that will be installed in the facility, it is apparent from BRUI’s other exhibits that Mr. Combs does not testify as to the facility’s structure or to the facility as a whole.

In Mr. Keith Parnell’s Direct Testimony, he provided an exhibit consisting of a letter from Mr. Combs. [Hearing Exhibit No. 1]. This letter detailed “the pricing summary for the equipment, tanks, and installation in [sic] the tanks at the Bush River Facility.” The letter provides a list of all equipment to be installed, but specifies that the structures (i.e. the tanks, sludge tanks, and concrete pads) are to be installed by Mr. Tom Creasman of Creasco, Inc. Mr. Parnell also includes an estimate from Mr. Creasman detailing the facilities that he will be building. ORS contends Mr. Combs did not take into account the facility as a whole in determining the average service life of the wastewater treatment facility and relied only upon his recommendation as to the individual components installed into the facility. Therefore, the Commission should also not rely upon this exhibit in determining the appropriate service life of the wastewater treatment facility.

Accordingly, ORS requests the Commission adopt a more reasonable and appropriate service life of thirty-two years for the proposed facility rather than the twenty-five years previously ordered. ORS also requests the Commission reconsider its Order that ORS took no position on the depreciation of the new wastewater treatment facility at the hearing.

WHEREFORE, having fully set forth its grounds for this Petition and Motion, ORS respectfully requests that the Commission reconsider Order No. 2005-83, as set forth herein, and grant such other relief as the Commission deems just and proper.

A handwritten signature in black ink, appearing to read "Benjamin P. Mustian", is written over a horizontal line.

Florence P. Belser, Esquire
Benjamin P. Mustian, Esquire
Office of Regulatory Staff
P.O. Box 11263
Columbia, South Carolina 29211

March 21, 2005